

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: June 29, 2007

TO: Alderman Brian Yates, Chairman and Members of the Zoning and
Planning Committee

FROM: Marie M. Lawlor
Assistant City Solicitor

RE: Item #66-07

Attached please find the latest draft of Item #66-07 as developed by the Planning Department and reviewed by the Law Department.

DRAFT – for discussion purposes 7/2/07

Proposed Planned Business Development Ordinance

1. *The following Section 30-15(s) is added:*

Section 30-15(s) *Planned Multi-Use Business Development (“PMBD”).* In any Business 4 or Business 5 District, the Board of Aldermen may give site plan approval in accordance with the procedures provided in Section 30-23, and may grant a special permit in accordance with the procedures provided in Section 30-24, for the applicable density and dimensional controls set out in Table A of this subsection for a Planned Multi-Use Business Development and the associated conditions set out below.

- 1) *Purpose:* A Planned Multi-Use Business Development is one which allows development appropriate to the site and its surroundings that provides enhancements to infrastructure, protection of nearby neighborhoods, and a mix of compatible and complementary commercial and residential uses otherwise unavailable in a single business district, and appropriate for sites located on commercial corridors, and is not inconsistent with the City’s Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.
- 2) *Minimum Criteria for Planned Multi-Use Business Developments.* In order to be eligible for any approval under this Section, a PMBD must meet the following threshold criteria:
 - (a) The Development Parcel shall be located in a Business 4 District and/or Business 5 District;
 - (b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this subsection, unless otherwise waived or modified by the Board of Aldermen with appropriate mitigation offered by the applicant;
 - (c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in Section 30-24(f); and
 - (d) If the PMBD’s mix of commercial and residential uses share parking facilities, the provisions of Section 30-19(d) shall apply, provided that in no event shall the required parking for residential units be less than 1.25 per dwelling unit.
- 3) *Additional Special Permit Findings for a Planned Multi-Use Business Development.* In addition to those criteria set forth in Section 30-23(c)(2) and in Section 30-24(d), the Board of Aldermen shall consider the application for a Planned Multi-Use Business Development in light of the following criteria:
 - (a) Adequacy of public facilities. Transportation, utilities, schools, and other public facilities and infrastructure serve the project adequately and safely without material deterioration in service to other nearby locations;
 - (b) Mitigation of neighborhood impacts. Mitigation measures have been included to address any material adverse impacts from the development

project on surrounding neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD;

- (c) Housing, traffic and parking improvements, and utility infrastructure enhancements. The PMBD offers long term public benefits to the City and nearby neighborhoods such as affordable housing, substantial parking, traffic and roadway enhancements, improved access and enhancements to public transportation, and water and sewer infrastructure enhancements;
- (d) Compatibility with its surroundings. The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, including building height, streetscape character, and overall project design, as well as providing appropriate setbacks and buffering and screening from the nearby properties, especially residential ones, as well as assurance of appropriate street or ground level commercial uses.
- (e) Not inconsistent with applicable local plans or general laws. The PMBD is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;
- (f) Improved access nearby. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on surrounding neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;
- (g) Enhanced open space. Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any;
- (h) Excellence in place-making. The PMBD provides a design of exceptional architectural quality so as to enhance the visual quality of the site in comparison both to its current uses as well as its surroundings; and
- (i) Comprehensive signage program. All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the Board of Aldermen, and not inconsistent with the architectural quality of the project or character of the streetscape.

Insert Table "A"

Table A

Draft 6/29/07

Density and Dimensional Requirements for Planned Business Developments Pursuant to Section 30-15(s)

Zoning District	Min. Lot Area	Min. Frontage	Max. # of Stories (1)	Max. Total Floor Area Ratio	Min. Lot Area per Res. Unit	Max. Lot Coverage	Min. Beneficial Open Space
<i>Business 4</i>	10 acres	100 ft.	8	3.0	1,200 sq. ft.	n/a	20%
<i>Business 5</i>	10 acres	100 ft.	8	3.0	1,500 sq. ft.	n/a	20%

Notes:

(1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of Special Permit by the Board of Aldermen and subject to such height and setback limits as established in Footnotes 2 and 3, following.

Table A Cont.

Draft 6/27/07

Max. Building Height and Min. Setbacks (7)											
Streetscape Façade				Interior Development				High-Rise Development			
Height	Front (4)	Side (5)	Rear (5)	Height	Front	Side (5)	Rear (5)	Height (2)(3)	Front	Side (6)	Rear (6)
36 ft.	Lesser of 15 ft. or 1/2 the build. height	Greater of 15 ft. or 1/2 build. height	Greater of 15 ft. or 1/2 build. height	96 ft.	Greater of 50 ft. or 1/2 build. height	Greater of 15 ft. or 1/2 build. height	Greater of 15 ft. or 1/2 build. height	96 ft.	100 ft.	50 ft.	100 ft.

Notes:

(2) Building height may be increased up to a maximum of 168 ft., subject to grant of Special Permit by the Board of Aldermen, provided the building is placed a minimum of 100 ft. from the front and rear lot lines, and provided the excess height of such building does not exceed the following: one foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.

(3) Any increase in building height requested pursuant to Fn. 2 must also be measured as contextual height. Such contextual height may not exceed by more than 5% the contextual height of the tallest building located within 2,000 ft. of the Development Parcel.

(4) The front setback may be decreased to a minimum setback equal to the greater of 15 ft. or the average setback in the immediate area, subject to grant of a Special Permit by the Board of Aldermen. The average setback applicable to a Development Parcel shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet. Buildings exceeding 96 ft. in height must meet the additional requirements of Fn. 2 and 3.

(5) Side and/or rear setbacks shall be a minimum of 20 ft. when abutting a residential zone or a Public Use zone.

(6) Side and/or rear setbacks shall be a minimum of 100 ft. when abutting a residential zone or a Public Use zone.

(7) The front, side, and rear setback requirements for parking facilities in a Development Parcel shall not be less than five (5) feet or, when abutting a residential or a Public Use zone, less than fifteen (15) feet.

(8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, (b) is setback from the façade of an adjoining or lower building element at least 20 ft. and c) for which there is a change in height of at least one story, and/or (d) is shown on a plan of a Development Parcel approved by the Board of Aldermen.

- 4) *Lots.* In the application of the requirements of this Ordinance to a Planned Multi- Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single or multiple ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection 5) below .
- 5) *Organization of Owners.* Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the City or its representatives. Such organization shall serve as the liaison between the City and any lot owner, lessee, or licensee within the PMBD which may be in violation of the City's Zoning Ordinance, shall be the primary contact for the City in connection with any dispute regarding violations of this Ordinance, and shall have legal responsibility for the PMDB's compliance with the terms of its special permit and site plan approval granted hereunder and with this Ordinance. In addition, the special permit may provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.
- 6) *Phasing.* Any Planned Multi-Use Business Development may be built in multiple phases over time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public roadways and other amenities are provided contemporaneously with or in advance of such initial construction.
- 7) *Post-Construction Traffic Study.* A Planned Multi-Use Business Development special permit granted shall provide for an analysis of:
 - (a) Trips generated by the PMBD site, measured at site driveways, prior to the construction of the PMBD;
 - (b) Trips projected by a professional traffic engineering firm to be generated by and distributed to the PMBD site by the PMBD; and
 - (c) Trips actually generated by and distributed to the PMBD one year after a certificate of occupancy is granted, with limitation to impacts caused by PMBD, as measured through an independent trip generation and distribution analysis, to be paid for by the developer or successor interest but conducted or overseen by the City.

To the extent that (c) exceeds (b) by ten per cent, as measured on a periodic basis over the course of a calendar year, the then owner of the Planned Multi-Use Business Development site shall begin mitigation measures within six months, satisfactory to the Director of Planning and Development and the City Traffic Engineer, to reduce

the trip generation variance and the trip distribution variance on roadways as specified by the Director of Planning and Development and the City Traffic Engineer to a level within ten percent of (b) within twelve months after the mitigation is begun. Failure to achieve such a reduction within one year after the analysis described in (c) is completed shall require forfeit of a bond or other security mechanism in an amount to be determined by the Board of Aldermen and included as a condition of the special permit, which funds shall be used for traffic mitigation by the City.

8) *Modifications.* Any material modification to a PMBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a PMBD:

- (a) A change of use, provided such change is to another use approved in the Special Permit, or relocation of an approved use within the PMBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PMBD devoted to such use does not increase by more than five percent (5%) in the aggregate;
- (b) A change of use that results in a lower net parking requirement for the PMBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance; and
- (c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23 unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study.
- (d) Except as provided above, any reduction in beneficial open space shall require additional approvals under this Ordinance.
- (e) Any condition identified by the Board of Alderman in the special permit as not subject to modification without additional approval shall require additional approvals under this ordinance.

9) *Applicability.* Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District or the Business 5 District, as applicable, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.

10) *Additional Filing Requirements for PMBDs.* In addition to the provisions of Section 30-23 and 30-24, general application requirements for grant of a special permit for a PMBD are as follows: Petitioners must submit in hard copy and, if feasible, by electronic submission (e-filing):

- (a) Scaled massing model or 3D computer model;

- (b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations;
- (c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (d) Site plans showing any “by-right” or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit hereunder; and
- (e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus.

2. Section 30-1 is amended by adding the following two definitions:

Open Space, Beneficial: Areas not covered by buildings or structures, which shall specifically include, but are not limited to: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit or (iv) areas that are accessory to a single commercial tenant, and controlled by the tenant thereof, and not made available to the general public. In calculations of the amount of beneficial open space provided, an offset of ten (10) per cent of the otherwise applicable square footage requirements shall be made for the provision of well maintained publicly available green planted areas.

Development Parcel: The real property on which a Planned Multi-Use Business Development is located, as shown on a Planned Multi-Use Business Development Plan approved by the Board of Aldermen in connection with a special permit under Section 30-15(s).

Height, Contextual: The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the City as implemented by the Engineering Division and (b) the mid-point between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.

3. *Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): “In Business District 4, a Planned Multi-Use Business Development;”*

4. *Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): “A Planned Multi-Use Business Development;”*